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Region 2 News Clips

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National News

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President Donald Trump is calling for critics and supporters of EPA's renewable fuel standard (RFS) to reach a compromise on revising the program, prompting the agency to launch an effort to review administrative authorities for reducing burdens on refiners in lieu of Congress granting refiners' call to repeal or reform the RFS.

Report: Trump Administration EPA Going Soft on Polluters (NY MAGAZINE; December 10, 2017)

Since Donald Trump became president, the Environmental Protection Agency has been doing a lot less to target polluters than the previous two administrations, according to a new analysis of EPA enforcement data and confidential internal documents by the *New York Times*.

Trump's EPA Says NYT 'Distorted The Facts' In Its Latest Article (DAILY CALLER; December 10, 2017)

The Environmental Protection Agency (EPA) is pushing back against a New York Times article suggesting the agency was scaling back enforcement efforts at the behest of the oil and gas industry.

Full Articles

Region 2 News

NJ.COM

Trump administration promises to clean up these N.J. Superfund sites

By Jonathan Salant

December 12, 2017

President Donald Trump's administration named three New Jersey locations -- more than any other state -- to a list of 21 Superfund sites to be immediately cleaned up.

The sites are in Bridgewater, Bergen County and Newark.

As an indication of the importance placed on these sites, cleanup efforts will be monitored by Environmental Protection Agency Administrator Scott Pruitt, who will receive regular progress reports.

"Getting toxic land sites cleaned up and revitalized is of the utmost importance to the communities across the country that are affected by these sites," Pruitt said. "By getting these sites cleaned up, EPA will continue to focus on ways we can directly improve public health and the environment for people across America."

The EPA also will turn its attention to other Superfund sites as well with an eye towards cleaning them all up. New Jersey has 116 such sites, more than any other state.

The announcement does not come with the promise of additional funds, and Trump's proposed budget would cut federal funding for the program by \$330 million to \$762 million. The administration earlier said the savings would come through reducing administrative costs.

"This list appears to be nothing more than a list of sites with upcoming actions for which the administrator wants to take credit," said Rep. Frank Pallone Jr., D-6th Dist., the ranking member of the House Energy and Commerce Committee.

"The National Priority List already identifies the most dangerous sites which are the top priorities for cleanup. Issuing this new arbitrary list has created confusion for community groups

around Superfund sites nationwide."

The three New Jersey sites are:

American Cyanamid. Located in Bridgewater, the 435-acre site was used to make chemicals and pharmaceuticals for more than nine decades. Wyeth Holdings, which currently owns the site, has taken steps to prevent benzene from seeping into the Raritan River, and other work is in progress. Wyeth, a subsidiary of Pfizer, has agreed to spend \$194 million on some remediation.

Berry's Creek Study Area (Ventron/Velsicol site). Mercury, methyl mercury and PCBs are on the site, which includes about six miles of waterway that connects to the Hackensack River. The EPA is expected to decide next year whether to propose interim steps while the study of the entire area continues.

Diamond Alkali. The site includes the former Diamond Alkali manufacturing facility in Newark, 17 miles of the lower Passaic River from Dundee Dam to Newark Bay, and the Newark Bay Study Area, which includes the bay and parts of the Hackensack River, Arthur Kill and Kill van Kull.

Chemicals include DDT, Agent Orange, PCBs, mercury and pesticides. A \$1.4 billion cleanup plan has been selected for the lower 8.3 miles of the Passaic River while studies of the entire river continue.

JERSEY SHORE ONLINE

Berkeley Residents Complain Of Water Quality

By Chris Lundy

December 12, 2017

Residents at a recent Township Council meeting complained about the quality of water being piped to some parts of town, but Aqua America, the water company, says that the water is safe.



A resident shows the difference in a water filter after being used for just a short time. (Photo courtesy Jason Kangas)

Resident Jason Kangas approached the governing body with a host of complaints. He said he's been buying cases of water to drink and cook with, but the household still bathes with it.

His filters, which are supposed to last a certain amount of time, get discolored and need to be replaced before that time. He said a friend who works for the Environmental Protection Agency had it tested, and the results were shocking to him. It came up as having twice the limit of iron, and five times the limit of aluminum. It also had radionuclides.

Kangas said he felt that his concerns were being ignored by the company, since he's just a resident. He asked the governing body to advocate on behalf of him and his neighbors to get Aqua to clean up the water.

The Township Council passed a resolution urging the Board of Public Utilities to hold Aqua accountable for the situation. Mayor Carmen Amato asked the township engineer to contact the Department of Environmental Protection about it.

Councilman Keith Buscio said his house was on the Berkeley Township Municipal Utilities Authority water before being switched to Aqua. He saw a big change. Aqua had a chlorine smell, hard water, and created an orange-red ring in the toilet if the water sat too long. After calling to complain, he was told a new iron removal system is going in but won't be finished until the end of 2018 or beginning of 2019.

A representative from Aqua emailed a response to these concerns.

"Aqua uses chlorine in our water treatment process and it is not uncommon for treated water to have a slight chlorine smell from time to time," said Dan Lockwood, manager of communications. "Aqua works to keep a minimum level of free chlorine residual in the system to consistently meet NJ Department of Environmental Protection standards. Because some may

detect the smell of chlorine more easily than others, we ask any Aqua customers that notice a chlorine odor in their water that they believe is stronger than normal to call our customer care center at 877-987-2782 so we can investigate on a case-by-case basis.”

He explained that the rings in the toilet are likely from iron. The company will be upgrading the local facilities to address this issue.

“The project is currently in its design and permitting phase,” he wrote. “We expect to begin construction on the upgrades in mid-2018 and expect the project to be completed by mid-2019. Once work is completed, that will help to alleviate the issue.”

Radionuclides, according to the EPA, are radioactive forms of elements. They are sometimes naturally occurring.

Aqua shared test results from November, which showed that the levels of radionuclides were within levels deemed acceptable by the DEP.

Radionuclides are a primary contaminant, held to stricter standards than aluminum and iron, which are secondary contaminants. Lockwood said the difference is that secondary contaminants are aesthetic issues in low amounts.

Aluminum, in low levels, is also naturally occurring in the area, he said. The company follows a quarterly testing cycle to be within DEP standards.

MID-HUDSON NEWS

Riverkeeper has faith in DEC when dealing with Newburgh’s water

December 11, 2017

A state Department of Environmental Conservation official told the Newburgh City Council last week the agency expects to switch back to Washington Lake for the city’s water supply in January. That follows the installation of a high-tech carbon filtration system to catch the PFOS in the lake coming from the Stewart Air National Guard Base.

Council members and city residents objected to the conversion at this time, but Riverkeeper Paul Gallay told Mid-Hudson News he has full confidence in the DEC’s decisions.

“I think the state really heard the community and heard the concerns about the safety of the water and I think the state is dedicated to only turning that water supply back on when it is safe and it is demonstrably safe,” Gallay said.

The city has been using the New York City Catskill Aqueduct for the last year-and-a-half for its water.

Gallay said the federal government has “so many questions to answer here and so much to reckon with and it is really shameful that they have not made more progress by now, so we are going to be looking for the federal government to up their game significantly here.”

MID-HUDSON NEWS

EnCon officers nab trucker at closed landfill

December 11, 2017

State Environmental Conservation officers charged a dump truck driver with driving without a license and driving a commercial vehicle under the influence of alcohol.

On November 25, Capt. Martin Townley observed a dump truck bringing a load of fill contaminated with solid waste to a dump site in the Town of Wallkill. The site had been shut down by DEC’s Division of Law Enforcement due to previous instances of unlawful dumping.

Townley conducted a traffic stop and interviewed the operator. He detected an odor of alcohol coming from the cab of the vehicle.

A check of the operator’s driving record documented a lengthy list of infractions including failing to pay fines and failing to answer summonses, which resulted in the revocation of his driver’s license.

Capt. Townley contacted an Environmental Conservation officer and State Police for assistance. A field sobriety test determined that the man was driving while impaired by alcohol.

He was taken into custody and charged with aggravated unlicensed operation of a motor vehicle as a felony, driving while ability impaired, and driving a commercial vehicle while under the influence of alcohol.

The dump truck, along with its contents, was towed to the local impound lot. The driver was held for arraignment in town court.

NJ SPOTLIGHT

Grid Operator Counsels Caution About PSEG Nuclear Subsidies

By Tom Johnson

December 11, 2017

In letter to Senate committee, PJM says PSEG must demonstrate need for subsidies, suggests alternative solutions can be pursued



The operator of the nation's largest power grid is urging New Jersey to consider a regional solution to bolstering the economics of the state's nuclear industry, an approach so far ignored by legislators.

In a letter delivered to the chairman of the Senate Environment and Energy Committee, PJM Interconnection urged policymakers to consider a regional approach rather than having the state act on its own, an approach being touted by Public Service Enterprise Group.

The proposal, likely to be fast-tracked in the remaining sessions of the lame-duck Legislature, is pitting the company, the operator of three nuclear units, against consumer advocates, other business interests, and environmentalists over whether the plants need lucrative subsidies to remain open.

The subsidies likely would be paid by utility customers, and could end up costing ratepayers billions of dollars over a decade if the state follows similar programs enacted by New York and Illinois to rescue its nuclear sector.

Even though no bill has been introduced, prospects appeared to grow for legislative action when Gov. Chris Christie last week signaled he would sign a bill supporting the sector — provided it was not loaded up with other costs for other environmental programs.

PJM urges caution

PJM's letter urged caution, a strategy frequently voiced by foes of the concept. They argue the company has yet to demonstrate subsidies are needed and should wait and see what approach is taken by the grid operator to enhance the plants' revenues, or other alternatives advanced by the federal government.

PSEG has told lawmakers the plants could turn unprofitable within two years. It contends the units are not being fairly valued for providing fuel diversity to bolster reliance of the power grid, or for being a carbon-free source of electricity.

In its letter, PJM notes it already has provided enhancements that have provided benefits to owners of power plants and others are under consideration for units within the power grid. The power grid is reliable and will continue to be so in the future, according to the letter.

PJM also argued its proposed changes in energy pricing will provide additional incentives to power suppliers to more accurately reflect their costs. Much of the power sector is facing steep economic challenges as energy prices have fallen because of plentiful and cheaper supplies of natural gas.

If the state opts to wait for a regional solution, it has the benefit of spreading the cost of any financial incentives for the plants to the entire region, not just New Jersey electric customers.

The grid operator noted the changes occurring in the industry, but added "New Jersey need not address these challenges in a vacuum." It argued being located within PJM, allows for solutions that can enhance the state's policy priorities.

No skin in the game

Opponents of the subsidies welcomed the PJM letter, noting that the grid operator is an independent entity and has no "financial skin" in the game.

"It completely undermines the self-serving arguments that PSEG presented at the recent joint (legislative) hearing to justify a multibillion-dollar subsidy scheme, the details of which remain secret," said John Sheik, president and CEO of the Electric Power Supply Association, an industry trade group.

The Legislature has sessions scheduled today and Thursday, but so far no hearings on any legislation have been announced publicly.

STAR-LEDGER

[Stop the rushed deal for massive nuclear subsidies](#)

By Tom Moran

December 10, 2017

PSEG is warning that it may have to shut down its three nuclear plants in South Jersey unless it receives a subsidy, one that could easily cost ratepayers \$300 million a year. That's a kick in the teeth, given that New Jersey families and businesses already pay among the highest rates in the country.

But if the plants close, it could be worse. Rates would spike, hundreds of good jobs would evaporate, and it would take decades for wind and solar power to match the carbon-free emissions of these behemoths, which supply nearly half the state's power.

So, this is a tough one, a complex challenge with high stakes.

What is our Legislature doing? Rushing to draft a bill in haste, like a bunch of college kids who just learned their term paper is due in the morning.

And PSEG is behaving just as badly, using its muscular lobbying power to take advantage of Trenton's dysfunction. It is an unseemly power play, one that damages the company's reputation for fair play.

"This stuff is complicated," says Stefanie Brand, the ratepayer advocate, who opposes the subsidies. "They need to take the time to understand it. This is a lot of money."

At a packed hearing in Trenton on Monday, legislators heard from dozens of experts on the complex workings of the energy market, and from leaders of the business community who were split down the middle.

The legislators asked a total of one question all day. This was not an open discussion of the merits. It was a sham, a way for legislators to check a box before they ramrod this giant subsidy through during this lame duck session.

The rush is particularly galling when you consider that PSEG's boss, Ralph Izzo, testified that plants are still making money, for at least the next two years. And if the price of natural gas rises, these plants could become profitable again.

That's happened before, and ratepayers got screwed. In 1999, PSEG won a deal that delivered nearly \$3 billion in added payments from ratepayers. It turned out that energy prices then skyrocketed, giving the company an enormous windfall. The \$3 billion was locked in, no matter.

"What we're hearing today is reminiscent of what we heard back then," said Steve Goldenberg, an attorney for the New Jersey Large Energy Users Coalition testified. "I congratulate PSEG on its legislative strategy, but this is unfair to everyone else in the room. This is complete gamesmanship."

PSEG's core claim, that these plants are vitally important, is beyond dispute. And the stress that these plants face is real. According to the Nuclear Energy Institute, 19 plants across the country are in the process of being decommissioned today. For the climate, that is a disaster, since nuclear is by far the largest source of carbon-free energy. It is a killer to local economies as well.

But why not take the time to design a rescue with care? This rush job is exactly what we just saw in Washington when Republicans voted on the repeal of Obamacare, and on this monstrous tax plan, without hearings, and without waiting for their own professionals to analyze the impact.

Senate President Steve Sweeney (D-Gloucester) controls the pace, and the nukes are in his district. No doubt, he feels he can get a better deal from Gov. Chris Christie, who offered conditional support last week.

This is indefensible. And for ratepayers, a potential disaster.

ARCHITECT'S NEWSPAPER

Gowanus Canal superfund cleanup might derail historic district designation

By Johnathan Hilburg

December 11, 2017

As New York City's federally mandated cleanup of the toxic Gowanus Canal continues to ramp up, efforts to install sewage tanks at the head of the canal could end up destroying several buildings that would help the neighborhood qualify for a national historic district designation.

The decision to buy out three private parcels along the canal comes after local community pushback canceled the Department of Environmental Protection's (DEP) initial plans to install the 8-million-gallon detention tank under the nearby Double D Pool and Thomas Greene Park. Instead, the DEP will now buy out the three parcels for a cost of up to \$70 million. If the owners refuse to sell their land, the city will begin a lengthy eminent domain process to seize them.

Apart from the monetary costs, leveling the existing buildings at 234 Butler Street, 242 Nevins Street and 270 Nevins St. for use as a staging area during the construction could damage the neighborhood's standing in the eyes of the National Register of Historic Places. If local officials were to submit Gowanus's low-lying, historically industrial waterfront for preservation, it's likely that the construction of the tank would affect the area's eligibility.



The Gowanus station building. (pardonmeforasking/Flickr)

The 100-year-old 234 Butler St. in particular stands out for its terra cotta and brick façade, with the Gowanus name emblazoned in brick on the building's cornice. Residents of the Brooklyn neighborhood rallied to protect the former Gowanus Station upon learning that the EPA and DEP would be tearing it down. In a press release to the borough president, Linda Mariano of Friends and Residents of Greater Gowanus, said, "Its design and sculptural elements tie directly into the history of the Gowanus neighborhood's relationship with water. It can and should be saved."

In a letter to the EPA, Olivia Brazee, Historic Site Restoration Coordinator with State Historic Preservation Office, wrote that "Its demolition would adversely affect both the building and the National Register eligible Gowanus Canal Historic District."

While an attempt was made to have the neighborhood officially realized as a state and national historic place in 2014, community intervention ultimately led to the plan being shelved. The DEP and EPA will need to come to an agreement on the location of the detention tank before the canal's dredging finishes in 2027, but if installed, would reduce wastewater runoff into the canal by up to 91 percent.

National News

GREENWIRE

Pruitt's 'war on lead' ignites skepticism

By Ariel Wittenberg and Corbin Hiar

December 11, 2017

U.S. EPA Administrator Scott Pruitt's efforts to escalate the agency's battle against lead contamination are running into a wall of skepticism and concern from environmental and public health advocates.

Speaking before members of the House Energy and Commerce Subcommittee on Environment last week, Pruitt said he is working on a 10-year strategy to "eradicate" lead poisoning, describing his plan as an "ambitious initiative" (E&E Daily, Dec. 8).

"There's a multifaceted approach we need to evaluate if we are to declare a 'war on lead,' if you will," Pruitt said.

However, environmental health advocates critical of the Obama administration's sluggish response to the Flint, Mich., lead crisis reacted to Pruitt's comments with doubt and cynicism.

"I would not trust the Trump people to do this or any other thing," said Ronnie Levin, who manages the water and health program at the Harvard T.H. Chan School of Public Health and used to work at EPA.

"I would not trust them to redo *Good Housekeeping's* cake book," she said. "And that's not because I disagree with their politics. It's because they are fundamentally against science, and they see nothing wrong with jeopardizing public health."

In Pruitt's brief tenure in office, he has attracted the scorn of nonpartisan public health officials for decisions that have rolled back clean air and water standards and delayed, weakened or killed chemical safety rules advanced by the previous administration. He has also sought to cut many key public health programs at EPA — including those that aim to reduce lead poisoning.

Lead, a potent neurotoxin, is a heavy metal used for decades in pipes and paint that can be particularly harmful to children, leading to learning disabilities and slower growth.

Its regulation in drinking water has been a challenge for the federal government because it is one of the few contaminants that enters water from pipes, after it has already passed through systems to treat source water. The 1991 Lead and Copper Rule attempts to tackle that challenge by requiring utilities to do selective testing for lead at the tap. Utilities have to replace affected lead pipes if more than 10 percent of sampling sites show lead levels at more than 15 parts per billion.

In Flint, lead contaminated the water supply after the state ordered the city to change to a more corrosive water source in a penny-pinching move.

Facing increased pressure after Flint made national headlines for extremely high lead contamination in drinking water, the Obama administration had been on track to propose a reformed Lead and Copper Rule in June 2017.

While Congress has criticized the Trump EPA for delaying the new rule for six months, with a proposed update expected in January, health advocates like Levin say they fear the Trump administration will gut the rule.

Lead pipe testing

Of particular concern are comments from Lee Forsgren, the top political appointee at EPA's Office of Water, that the agency is no longer considering requiring utilities to proactively begin replacing lead pipes before elevated lead levels are tested.

Under President Obama, EPA had been considering requiring utilities to set enforceable timelines for replacing lead service lines, the small pipes that connect homes and businesses to larger water mains.

Some health advocates said the administration should do more to encourage lead pipe removals. But others said the policy would have been a welcome departure from current requirements that utilities only replace lead pipes after tests have found elevated lead levels at more than 10 percent of properties sampled.

Forsgren told Bloomberg Environment in November that requiring lead pipe replacements would be "an unfunded mandate that would be unprecedented, the likes of which we have never seen."

Utilities estimate there are between 7 million and 11 million lead service lines in the country, which could cost up to \$30 billion to replace. In its fiscal 2018 budget request, the Trump administration asked Congress for a modest \$4 billion increase to the \$2.26 billion Drinking Water and Clean Water state revolving funds, which some states have begun to use to replace lead pipes.

EPA didn't respond to specific questions about the status and scope of the Lead and Copper Rule but re-emphasized the agency's commitment to reduce lead poisoning.

"Administrator Pruitt feels strongly that addressing lead is [an] important priority for EPA," a spokesman said in an email. "We will be unveiling more details on this soon."

Public health advocates say they fear Pruitt's EPA, without including any incentives or requirements for utilities to begin proactively replacing lead pipes, would instead lean into more problematic proposals the Obama administration had been considering.

A 2015 report from the National Drinking Water Advisory Council called on EPA to boost public education programs, tighten corrosion control requirements when a municipality changes its water source and allow utilities to perform lead tests at the customer's request.

Tracy Mehan, executive director of the American Water Works Association, which represents water utilities, said he supported the 2015 working group's proposals.

He also said he did not blame the Trump administration for taking its time on the Lead and Copper Rule, noting that the Senate has yet to confirm the nominee to lead the Office of Water.

"It is understandable that it would be delayed," he said.

At the time, some argued that the recommendations would weaken the rule by relying on customer-initiated requests for lead sampling. That could potentially leave out disenfranchised neighborhoods that are most at risk for lead poisoning, where residents may not have the ability or willingness to contact the local water utility for a test, and change other monitoring requirements.

"If that is enacted, it will just tell consumers that you are on your own — no one is protecting you from lead in water at all," said Marc Edwards, a Virginia Tech scientist credited with discovering the Flint crisis. "So many of the recommendations would make sure another Flint would not occur because you wouldn't know about it in the first place. Not because they would reduce lead contamination."

Edwards and other critics of the current regulation have lambasted sampling methods used by utilities, which can be manipulated in ways that don't give an accurate picture of lead contamination. In addition, it's often the same homes with a low risk of having lead that are tested multiple times, leaving out possible contamination in the wider communities. Large utilities are also allowed to sample just once every three years.

While Edwards said he was "frustrated" that the Obama EPA didn't act to close those kinds of loopholes, he said some of the changes now under discussion "are worse than doing nothing."

"I'm of a mixed mind at this point about whether I want anything done," he said. "I've given up on the EPA."

While changes to federal regulations have been slow going, Edwards said "our best hope" for reducing lead contamination comes from Michigan regulatory efforts. The state is considering its own regulations to strengthen sampling methodology and public outreach, as well as to replace lead pipes, among other changes.

When the new effort was announced in March, Republican Gov. Rick Snyder said it was needed because "the federal Lead and Copper Rule is dumb and dangerous."

Edwards said, "If they are successful, maybe that could be adopted by the other states."

Yanna Lambrinidou, founder of Parents for Nontoxic Alternatives, agreed, calling the Michigan effort "the most promising initiative to strengthen the Lead and Copper Rule."

Concerns swirl around lead paint plans

Public health experts are also closely watching Pruitt's efforts to address lead-based paint, which actually poisons more children in the U.S. each year than lead pipes.

"I am pleased that Scott Pruitt is taking on this issue, but to have success requires a comprehensive understanding of lead issues," said Howard Mielke, a professor of pharmacology at Tulane University's School of Medicine.

Mielke is particularly worried about comments Pruitt has made about removing lead paint.

"This is a topic of concern because multiple studies have noted that the process of removing lead-based paint creates lead dust that settles in the environment inside or outside of homes," he said. "Older painted homes can be safe if homeowners are diligent about maintaining and coating old surfaces with modern low lead paints. Window ledges are a special concern because they tend to be at an ideal height for children to teeth on."

Meanwhile, Pruitt has proposed zeroing out EPA's Lead Risk Reduction Program and state and tribal assistance grants that bankroll training programs for certified lead contractors. Those programs in fiscal 2017 received nearly \$13.3 million and over \$14 million, respectively.

Instead, the 2018 EPA budget justification said those efforts would continue under the agency's Chemical Risk Review and Reduction Program. But that office would get less than a \$6.6 million increase under Pruitt's plan — a combined drop of around \$20.7 million for fighting lead poisoning.

Meanwhile, a 2018 appropriations bill that cleared the House in September would maintain the lead abatement grants for states and tribes at their current spending levels.

Levin, now at Harvard, in August left EPA after more than 30 years. She helped write the original Lead and Copper Rule toward the beginning of her tenure and was working on lead paint enforcement when she left the agency.

The professor noted that the Obama EPA had been working on extending the Lead Renovation, Repair and Painting Program — which requires certified contractors to work on projects that disturb lead-based paint in homes — to include public and commercial buildings. EPA had issued a notice about the effort in August 2014, with plans to propose a regulation in April of this year.

After the inauguration, "it all went quiet," she said.

In its first regulatory plan for 2017 issued in July, the Trump administration changed the timeline for proposing a rule to "to be determined."

EPA also declined to respond to questions about its proposed cuts to programs that work to reduce the risk of lead paint.

GREENWIRE

Action against polluters drops under Pruitt — analysis

December 11, 2017

Under President Trump, U.S. EPA has slowed attempts to curb polluters and restricted the power of agency enforcement agents, *The New York Times* reports.

An analysis of enforcement data by the *Times* shows that EPA under Administrator Scott Pruitt started about one-third fewer civil cases against polluters during the first nine months compared with the agency under President Obama's first EPA chief over the same period. Compared with the George W. Bush administration over the same stretch, agency actions are down by about a quarter.

The agency can demand that a company retrofit emissions equipment to decrease pollution. Data show another drastic drop in Trump EPA use of this measure, called injunctive relief.

The trend coincides with policy changes regarding enforcement agents, who can no longer order certain water and air pollution tests without express permission from the national office. These tests are often used to build cases against polluters.

The changes come after lobbying from oil and gas executives, according to documents reviewed by the *Times*.

Some staffers say the agency is shirking its duty and letting polluters off the hook.

"Certain people who are polluting are doing it with impunity right now, and I think it is horrible," said Nicole Cantello, an EPA lawyer in the Chicago bureau.

In a statement, EPA defended its commitment to enforcement. "EPA and states work together to find violators and bring them back into compliance, and to punish intentional polluters," the agency said (Lipton/Ivory, *New York Times*, Dec. 10).

INSIDE EPA

Trump's Call For RFS Deal Spurs EPA To Weigh Options To Ease Burdens

By Stuart Parker

December 11, 2017

President Donald Trump is calling for critics and supporters of EPA's renewable fuel standard (RFS) to reach a compromise on revising the program, prompting the agency to launch an effort to review administrative authorities for reducing burdens on refiners in lieu of Congress granting refiners' call to repeal or reform the RFS.

At a Dec. 7 White House meeting with GOP senators from oil-producing states, led by Sen. Ted Cruz (R-TX), press reports say that Trump urged the anti-RFS lawmakers to reach a compromise with their pro-RFS colleagues from corn ethanol-producing states over the future of the program. Trump has affirmed his support for ethanol, but also his desire to ease regulatory burdens on industry.

At the meeting, EPA Administrator Scott Pruitt reportedly suggested administrative steps the agency could take to ease the compliance burden for refiners, although details are so far unavailable.

The agency also published in the Dec. 8 Federal Register an information collection request (ICR) seeking input on possible measures to curb the costs of the RFS. The comments on that ICR, which are due by Feb. 6, could give refiners and others a venue for pitching administrative changes to the program.

Congress still appears deadlocked over whether to pursue reform of the RFS, blunting momentum for bipartisan reform efforts in both the House and Senate, suggesting Pruitt will have to rely on existing administrative authority for any efforts to ease the RFS' burdens rather than waiting on new statutory power.

EPA will publish its final rule setting biofuel volumes for 2018, and biodiesel volumes for 2019, in the Dec. 12 *Register*, starting a 60-day window for parties to sue the agency over the rule.

Also appearing the *Register* Dec. 12 is a notice of availability advising the public of a new EPA statutory interpretation document on RFS "periodic review," which rejects arguments that EPA has an annual obligation to review the program's existing "point of obligation" compliance mandate on refiners.

RFS opponents led by Cruz sought a meeting with Trump to redress what they see as the RFS' unfair burden on refiners rather than other parties such as fuel blenders.

Sens. Cruz, Pat Toomey (R-PA), James Lankford (R-OK), Mike Enzi (R-WY), Bill Cassidy (R-LA), John Barrasso (R-WY), John Kennedy (R-LA) and Mike Lee (R-UT) met with Trump last

week. They hailed “a productive meeting today with the President to discuss how to fix the RFS compliance problem in a way that protects both refinery workers and corn farmers. We look forward to working with our colleagues representing Midwest states to find a win-win solution.”

But corn-state GOP senators after the meeting appeared not to be discussing compromises. For example, Sen. Charles Grassley (R-IA), a vocal RFS advocate, reportedly said after the event if Cruz and colleagues have a plan, he has yet to see it.

Sen. Joni Ernst (R-IA) on Twitter thanked Trump “for reiterating your commitment to Iowans and all of rural America by continuing to support the Renewable Fuel Standard in today’s meeting.”

Administrative Actions

In the absence of a legislative solution, EPA could look to take administrative actions to alter the RFS.

One possibility discussed at the meeting, sources say, was placing a price cap on RFS compliance credits, known as renewable identification numbers (RINs). Volatility in the RIN market, where prices can suddenly surge, has led to loud complaints from “merchant” refiners that they are suffering economically from the RFS' current structure.

Merchant refiners cannot generate RINs by blending biofuel, and are therefore dependent on buying RINs from others, sometimes at high prices. Critics of the current structure say the RIN market is opaque and prone to fraud and speculation.

The oil industry, however, is split on moving the point of obligation to require blenders to surrender RINs to EPA, rather than refiners and importers. The American Petroleum Institute (API), representing large, integrated oil companies, has opposed such a move, while the American Fuel and Petrochemical Manufacturers (AFPM), representing a broad swath of the industry including merchant refiners, backs it.

The Renewable Fuels Association (RFA), representing the ethanol sector, reacted negatively to the RIN price-cap idea. RFA President and CEO Bob Dinneen said, “Numerous analyses, including those recently conducted by Wells Fargo, Harvard University, [Massachusetts Institute of Technology], the University of Michigan, Iowa State University, and other institutions, show that merchant refiners recoup their RIN costs through higher refining margins, while retail gasoline prices are unaffected by RINs.”

Further, “Administrator Pruitt’s own EPA reached a similar conclusion in its final 2018 Renewable Fuel Standard rule,” RFA says. In that rule, the agency says, “EPA has invested significant resources evaluating the impact of high RIN prices on refiners. After reviewing the available data, EPA has concluded that refiners are generally able to recover the cost of RINs in the prices they receive for their refined products, and therefore high RIN prices do not cause significant harm to refiners.”

In light of these findings, EPA does not have the statutory authority to reduce the required renewable fuel volumes for 2018 in an effort to achieve lower RIN prices,” Dinneen notes.

AFPM, meanwhile, in a Dec. 12 statement said, “AFPM is grateful for the President’s commitment to addressing challenges with the RFS program in a way that protects US manufacturing, promotes a vibrant rural economy, and ultimately benefits American drivers,” while API continues to call for a bipartisan legislative push to reform the RFS.

Another possible mechanism for EPA to ease compliance burdens for refiners would be to grant Texas’ Dec. 1 request for a waiver from the program based on “severe economic harm,” or an earlier, similar petition by Pennsylvania Gov. Tom Wolf (D).

New ICR

To help EPA prepare for possible measures to curb the RFS’ costs, the agency announced its new ICR, which will supersede existing ICRs for the program.

EPA in the notice says it is “intended to streamline and update estimates related to RFS. This new collection includes elements of some existing RFS ICRs. The goal of this new, consolidated ICR is to put all RFS estimates into one, consistent, and easy-to-understand format.”

The information gleaned on the RIN market will help shape future EPA policy. One such possible avenue to use new information will be EPA’s forthcoming rule to “reset” cellulosic and advanced biofuel volumes from statutory levels. Under the RFS, if projected volumes of these fuels fall too far below levels required by Congress, EPA may reset them to what it views as a more realistic level. The rule may afford an opportunity to reshape the RFS and the RIN market.

NY MAGAZINE

Report: Trump Administration EPA Going Soft on Polluters

By Chas Danner

December 10, 2017

Since Donald Trump became president, the Environmental Protection Agency has been doing a lot less to target polluters than the previous two administrations, according to a new analysis of EPA enforcement data and confidential internal documents by the New York *Times*. In its first nine months under administrator Scott Pruitt — a coal-loving climate-change skeptic and longtime critic of the agency — the EPA has pursued far fewer civil cases, financial penalties, and factory-retrofitting demands against suspected polluters and other violators of environmental laws than it did during the same period of the Obama and Bush administrations.

The Pruitt-led EPA has also restricted one of its enforcement officers' most effective tools for going after polluters. Those officers, to the displeasure of the oil and gas industry, used to be able to order their own tests of air and water quality to detect pollution, but are now required to seek permission from Washington beforehand, especially when they don't have preexisting evidence of illegality or when state authorities object to the tests. So far, the agency appears to be conducting comparably fewer of these tests, but it maintains that it has not rejected any requests to do so.

The *Times* also reports that the agency has signaled that it will be abandoning some of its preexisting pollution cases, supposedly to let states take them over in what the EPA calls "cooperative federalism." The move may just be a smokescreen for letting those cases slide, however. Internal documents reportedly show that the enforcement slowdown happened at the same time Pruitt instituted new policies favored by leaders in the fossil-fuel industry.

The fact that more than 700 EPA employees have left the agency since Trump won the presidential election, many via staff-reduction buyouts, isn't helping with enforcement either. And top politically appointed positions at both the EPA and Justice Department remain vacant, too (though a coal-industry lobbyist was recently nominated to serve as the EPA's deputy administrator).

"We are collaborating more with states and focusing more on outcomes," an EPA spokesperson insisted in a statement to the *Times*, claiming the agency was now more focused on "bringing people back into compliance, than bean counting." The agency also suggested it was using "informal" enforcement actions in addition to formal ones, and complained that the first nine months was too short of a timeframe to make accurate judgments about their progress or intentions.

Pruitt says he is no ally to polluters and that they will not be allowed to run amok as the Trump administration rolls back regulations across the government. The data in the *Times* analysis seems to indicate otherwise.

DAILY CALLER

Trump's EPA Says NYT 'Distorted The Facts' In Its Latest Article

By Michael Bastasch

December 10, 2017

The Environmental Protection Agency (EPA) is pushing back against a New York Times article suggesting the agency was scaling back enforcement efforts at the behest of the oil and gas

industry.

NYT reporter Eric Lipton wrote President Donald Trump's administration "has adopted a more lenient approach than the previous two administrations — Democratic and Republican — toward polluters," based on data given to him by a former President Barack Obama administration official.

"Confidential internal EPA documents show that the enforcement slowdown coincides with major policy changes ordered by Mr. Pruitt's team after pleas from oil and gas industry executives," Lipton reported.

Lipton also claimed that Administrator Scott Pruitt took away regional officials' "authority to order certain air and water pollution tests, known as requests for information, without receiving permission from Washington."

Overall, the article takes a negative tone against Pruitt, and overwhelmingly quotes Pruitt critics.

EPA fired back, saying in a press release there "is not only no reduction in EPA's commitment to ensure compliance with our nation's environmental laws, but a greater emphasis on compliance in the first place."

The EPA said Lipton's account "distorted the facts" on its enforcement efforts.

Pruitt "has not directed EPA staff to decrease their enforcement efforts and no request to gather enforcement information has been denied," EPA said in its release on Sunday.

Lipton and Pruitt's EPA have a rocky relationship, to say the least. Lipton has been reporting on Pruitt since at least 2014 when he published an article detailing a supposedly "secret alliance" between Pruitt — a former Oklahoma attorney general who worked with oil and gas companies to defeat EPA regulations.

Things haven't gotten better since then. "No matter how much information we give you, you would never write a fair piece," EPA spokeswoman Liz Bowman told Lipton in an email before he published a story in October.

EPA is once again pushing back against Lipton's reporting, saying NYT's "methodology masks the decline of enforcement that occurred over the course of the last administration, which saw a reduction in both the civil and criminal enforcement programs."

Lipton reported on Sunday that EPA has sought civil penalties "about 39 percent of what the Obama administration sought and about 70 percent of what the Bush administration sought" in the first nine months of taking office.

Pruitt's EPA has only demanded companies pay \$1.2 on retrofits to mitigate pollution, Lipton reported. Lipton expanded on existing work done by former Obama EPA enforcement official Cynthia Giles.

It's all part of Pruitt's "cooperative federalism" focus, whereby EPA lets states take the lead in certain areas of enforcement. EPA also puts a greater emphasis on working to bring facilities into compliance instead of levying huge fines.

"Unless the activity is criminal, we focus more on bringing people back into compliance," EPA said in the release. "This means that EPA Regions share work with the states, and Regions take both formal and informal enforcement actions."

Lipton did note this in his piece, but he also reported current and former officials said "the new direction has left many employees feeling frozen in place, and demoralized, particularly in the regional offices, which have investigators who are especially knowledgeable of local pollution threats."

Lipton reported that "some lawyers suggest, are giving violators an upper hand in negotiating with the EPA."

EPA also said by comparing the first year of each administration, Lipton masked the decline in enforcement actions the tail years of the Obama administration.

EPA said the Obama administration went "from about 3,700 each of case initiations and case conclusions in FY2009, down to about 2,400 each of case initiations and conclusions in FY2016."

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